TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 253.

JABEZ G. SMALE, JOHN I. BENNETT, FRANK I. BENNETT AND CONRAD N. JORDAN, PLAINTIFFS IN ERROR,

vs.

CHARLES H. MITCHELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 17, 1887.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 25, 1890.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Friday, the fourth day of February, 1887, in the December term of said court, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the one hundred and eleventh year.

WM. H. BRADLEY, *Clerk.*

CHARLES H. MITCHELL
vs.
JABEZ G. SMALE *et al.* } Ejectment.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the fourth day of February, 1887, in the December term of said court, 1886, in the record of the proceedings thereof in said above-entitled cause before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

2 CHARLES H. MITCHELL
v.
JABEZ G. SMALE *et al.* } In Ejectment.

The said plaintiff, by his counsel, having heretofore, to wit, on the 26th day of January, A. D. 1887, and within one year after the rendition of judgment herein, made application by motion to the court for a new trial herein under the statute in such case made and provided, upon the payment of all costs recovered against him, which costs were paid prior to the time of making said application or motion, and this cause having been thereupon redocketed, and said motion having been postponed or continued until this day and coming on now to be heard, and having been argued by counsel for both parties now here, it is thereupon considered and ordered by the court, in pursuance of the statute in such case made and provided, that the judgment which was heretofore, to wit, on the first day of February, A. D. 1886, rendered herein be and the same is vacated, and that a new trial be accordingly granted and awarded to the plaintiff herein, his heirs and assigns, in pursuance of such statute.

To which action of the court sustaining the motion to vacate said judgment, and also in vacating said judgment, the defendant now here objects and excepts and asks leave of the court to prepare and file a bill of exceptions herein on or before the 1st day of March next, which was granted.

3 On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record; which said exceptions are in the words and figures following, to wit:

4 UNITED STATES CIRCUIT COURT, *Northern District of Illinois,* } *ss:*

CHARLES H. MITCHELL *vs.* JABEZ S. SMALE *et als.* } Ejectment.

And now, on this 26th day of January, A. D. 1887, comes Charles B. Shedd, in his own proper person and files a motion in writing in said cause that the judgment entered in the above-entitled case on the 1st day of February, A. D. 1886, be set aside in pursuance of the statute of the State of Illinois, which motion in writing was then and there presented to Hon. H. W. Blodgett, acting as circuit judge of said court, and was by him endorsed, directing the clerk to enter said motion; which said motion and said indorsement thereon are in the words and figures following, to wit:

5 UNITED STATES OF AMERICA, *Northern District of Illinois.*

In the Circuit Court of said District.

CHARLES H. MITCHELL *vs.* JABEZ G. SMALE *et al.* } In Ejectment.

To the honorable judges of said court:

Your petitioner, Charles B. Shedd, of Cook county, Illinois, respectfully represents, upon information and belief, that on the first day of February, A. D. 1886, a judgment was rendered in the above-entitled cause by and before his honor Judge Gresham, of said court, and hereby refers to said judgment for greater certainty herein and requests that the same be made and treated as part of this petition.

That on the 10th day of June, A. D. 1886, petitioner became the assignee and purchaser of the interest of said Mitchell in the said land and premises involved and in controversey in said suit; that on said last-mentioned day said Mitchell conveyed by deed his said interest to your petitioner; which said deed is here ready to be produced if desired by the court.

That petitioner has this day tendered and paid the clerk of said court all costs recovered in said cause, to wit, the sum of eighty-seven dollars, and that he is desirous of obtaining a new trial
6 of said cause under the statute of ejectment.

Petitioner therefore respectfully asks that the judgment so rendered as aforesaid in said cause be vacated and a new trial granted.

CHARLES B. SHEDD.

STATE OF ILLINOIS, *Cook County,* } *ss:*

CHARLES B. SHEDD, being by me first duly sworn, says that he has

read the foregoing petition, and that the same and each allegation thereof is true.

CHARLES B. SHEDD.

Subscribed and sworn to before me by said Charles B. Shedd this 26th day of Jan., 1887.

[SEAL.] ROBERT H. McMURDY,
Notary Public in and for Cook Co., Ills.

Endorsed: Filed Jan'y 26, 1887. Wm. H. Bradley, clerk.

7 There was also filed at the same time a certain other motion signed by William Prescott as attorney for Charles B. Shedd, marked Exhibit "2 a," in the words and figures following, to wit:

8 UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court of said District.

CHARLES H. MITCHELL
vs.
JABEZ G. SMALE *et al.* } In Ejectment.

And now comes Charles B. Shedd, the assignee and grantee of said Charles H. Mitchell, and moves the court for an order setting aside, annulling, and vacating the judgment heretofore and on the 1st day of February, A. D. 1886, rendered in said cause and for a new trial of said cause under and by virtue of the statute of Illinois in relation to new trials in ejectment, the said Shedd having paid all costs recovered in said cause.

WILLIAM PRESCOTT,
Att'y for C. B. Shedd.

Endorsed: Filed Jan'y 26, 1886. Wm. H. Bradley, clerk.

9 And now, afterwards, and on the 1st day of February, A. D. 1887, William Prescott, signing himself as attorney for Chas. B. Shedd, Chas. H. Mitchell, Nellie J. Mitchell, Hugh L. Mason, and Lizzie Prescott, filed in said cause what purports to be an amendment to said prior motion; which said amendment, marked in pencil Exhibit "b," is in the words and figures following, to wit:

10 UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court of said District.

CHARLES H. MITCHELL
vs.
JABEZ G. SMALE *et al.* } In Ejectment.

And now comes Charles B. Shedd, the assignee and grantee of said Charles H. Mitchell; Charles H. Mitchell, Nellie J. Mitchell, Hugh

L. Mason, and Lizzie Prescott and move the court for an order setting aside, annulling, and vacating the judgment heretofore and on the 1st day of February, A. D. 1886, rendered in said cause, and for a new trial of said cause under and by virtue of the statute of Illinois in relation to new trials in ejectment, the said Shedd having paid all costs recovered in said cause.

WILLIAM PRESCOTT,
Att'y for C. B. Shedd, Charles H. Mitchell, Nellie J. Mitchell, Hugh L. Mason, and Lizzie Prescott.

Endorsed: Filed Feb'y 1, 1887. Wm. H. Bradley, clerk.

11 And at the same time William Prescott, signing himself as attorney for Charles B. Shedd, Charles H. Mitchell, Nellie J. Mitchell, Hugh L. Mason, and Lizzie Prescott, filed a paper writing purporting to be a certain other motion for a new trial under said statute; which said motion, marked in pencil Exhibit "j," purporting to be an engrossed copy of amended motion, is in the words and figures following, to wit:

12 UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court of said District.

CHARLES H. MITCHELL
vs.
JABEZ G. SMALE *et al.* } Ejectment.

Motion for New Trial.

Leave of court having been first obtained for that purpose, the motion filed herein on the 26th day of January, 1886, is amended as follows:

On the ninth line from the top, immediately after the word "Charles H. Mitchell," insert as follows:

"Charles H. Mitchell, Nellie J. Mitchell, Hugh L. Mason, and Lizzie Prescott," and on the 20 line from the top, immediately after the word "C. B. Shedd," insert as follows: "Charles H. Mitchell, Nellie J. Mitchell, Hugh L. Mason, and Lizzie Prescott."

WILLIAM PRESCOTT,
Att'y for C. B. Shedd, Charles H. Mitchell, Nellie J. Mitchell, Hugh L. Mason, and Lizzie Prescott.

Endorsed: Filed Feb'y 1, 1887. Wm. H. Bradley, clerk.

13 And now, afterward, and on the 4th day of February, A. D. 1887, said motion coming on to be heard in open court, there was offered in evidence in support of said motion the record of the judgment rendered in said cause February 1, 1886.

Judgment.

CHARLES H. MITCHELL
vs.
JABEZ G. SMALE, JOHN I. BENNETT, FRANK I. BENNETT, and CONRAD N. JORDAN. } Ejectment.

Now come the parties, by their attorneys, and the court, having considered and being now fully advised upon the matters herein, upon the merits finds the defendants guilty of unlawfully withholding from the possession of the plaintiff the following-described lands mentioned and described in the plaintiff's declaration, to wit, the southwest fractional quarter of fractional section twenty (20), in township thirty-seven (37) north, range fifteen (15), in the county of Cook and State of Illinois, as patented by the United States to Horatio B. De Witt, under patent dated March first, 1850, and containing four acres and fifty-three hundredths of an acre. The court further finds that the plaintiff has established title in fee simple to said lands in the plaintiff and assesses his damages at one cent, and
that the boundary of said described lands does not extend
14 beyond the meander line of the original survey thereof by
the United States. As to all the rest and residue of the lands and tenements described in the plaintiff's declaration the court finds the defendants not guilty.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of and from the defendants the possession of the said first-described lands according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and that the plaintiff also have and recover of said defendants the said sum of one cent, his damages, together with his costs in this behalf expended, amounting to — dollars and — cents, and that he have execution therefor.

15 And thereupon there was offered in evidence in support of said motion a receipt of William H. Bradley, clerk, marked in pencil Exhibit "k," and which is in the words and figures following, to wit:

16 UNITED STATES OF AMERICA, }
Northern District of Illinois. }

Circuit Court of said District.

CHARLES H. MITCHELL
vs.
JABEZ G. SMALE *et al.* } Ejectment.

I have this day received from Charles B. Shedd, on behalf of himself or such other person or persons as may be entitled to a new trial

in said cause, the sum of eighty-seven dollars, being in full for all taxes, costs in the above-entitled cause.

WM. H. BRADLEY, *Clerk*,
By E. A. D.

January 26, 1887.

17 There was at the same time offered in support of said motion a certain affidavit of Charles B. Shedd, with the endorsement of Hon. H. W. Blodgett, judge of said court thereon, which is heretofore referred to as Exhibit "a" aforesaid.

There was next offered in support of said motion the affidavit of William Prescott, filed February 4, 1887, and which is marked in pencil Exhibit "n," and is in the words and figures following, to wit:

18 UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the Circuit Court of said District.

CHARLES H. MITCHELL }
vs. } In Ejectment.
JABEZ G. SMALE *et al.* }

WILLIAM PRESCOTT, being first duly sworn, upon his oath says that he was counsel for the said Charles H. Mitchell, plaintiff in the above-entitled cause; that as such counsel he instituted the said suit in the circuit court of Cook county, Illinois, and that he advanced and paid to the clerk of said circuit court of Cook county, on behalf of said Mitchell, the sum of six dollars, the full sum by such clerk demanded as and for fees and costs of such suit in said circuit court of Cook county. Affiant further states about Jan. 10, 1887, he also on account of Charles B. Shedd paid the witness, Joseph M. Spahn, five dollars in full of his claim as witness. Affiant further states that he was present and saw said Charles H. Mitchell pay to Mrs. Eliza Hill the sum of five dollars in full of her fees as a witness in said cause; that said payment to Mrs. Hill was during the progress of said trial or a short time prior thereto.

That affiant also at the commencement of said suit advanced to the sheriff of Cook county a sum equal to that demanded and required by him for fees in said entitled cause, which affiant now remembers was the sum of $3.00 on behalf of said pl't'ff, Mitchell.

WM. PRESCOTT.

Subscribed & sworn to before me January 26, 1887.
S. A. DRUMMOND, *U. S. Com.*

Endorsed: Filed Feb. 4th, 1887. Wm. H. Bradley, clerk.

19 There was then offered in support of said motion an affidavit of Charles B. Shedd, filed herein February 4, 1887, marked in pencil Exhibit "m," and which is in the words and figures following, to wit:

20 UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court of said District.

CHARLES H. MITCHELL
vs.
JABEZ G. SMALE *et al.* } In Ejectment.

Personally appeared before me this day Charles B. Shedd, of lawful age, and, being by me first duly sworn, upon his oath states that, as he is informed and verily believes, the said Charles H. Mitchell on the 2d day of March, 1883, conveyed, by a proper deed of conveyance, the undivided one-quarter of the lands and premises involved in the controversy in this suit—that is to say, the fractional southwest quarter of fractional section 20, township 37 north, range 15 east, of the 3 P. M., in Cook county, Illinois, to one Hugh L. Mason.

That on the 12th day of September, 1883, said Mitchell conveyed, by like deed of conveyance, the remainder of his interest in said land to one Nellie J. Mitchell; that on the 8th day of October, 1884, said Charles H. Mitchell and said Nellie J. Mitchell conveyed, by like deed of conveyance, the undivided one-half of said lands to Lizzie Prescott.

That on June 9th, 1886, the said Mitchells joined in a conveyance of the undivided one-fourth of said lands and premises and conveyed the same, by a like proper deed of conveyance, to affiant.

That on the 10th day of June, 1886, said Mason also conveyed, by a proper deed of conveyance, the undivided one-fourth of
21 said lands and premises to affiant.

Affiant further states that on said 10th day of June, 1886, affiant and said Lizzie Prescott became the owners as tenants in common of said lands and premises and are now such owners.

Affiant further states that on the 26th day of January, 1887, he paid, as he understands and as he is informed and believes, all the costs recovered in said cause, namely, the sum of eighty-seven dollars.

Affiant further states that — the time of the payment of said costs he applied to the deputy clerk in charge of fee bills and cost bills relating to said court and stated that he wished and desired to pay all the costs of said cause preparatory to making a motion for a new trial therein and requested said clerk to inform him as to the amount of costs required to be paid. Whereupon affiant was informed that said sum of eighty-seven dollars would amply cover all the taxed costs in said cause, and that he, said clerk, knew of no other taxable costs in said cause nor no other costs whatever.

Affiant further states that he has had no notice of any or other or further costs in said cause.

Affiant further states that he paid said costs on behalf of himself and any other person or persons who shall be entitled to a new trial in said cause.

Affiant further states that, as he is informed and believes,
22 the said suit in ejectment was commenced by said Charles H. Mitchell in the month of ——, 1882, and that all said conveyances were each and all subsequent to the commencement of said suit.

Affiant further states that in addition to the costs paid by affiant as aforesaid there has been paid by said Charles H. Mitchell and on his behalf the sum of twenty-one dollars, as appears by certain affidavits hereto attached, and that said sum of twenty-one dollars is also among the said costs as taxed by the clerk of said court, and that there has been paid altogether as costs in said suit the sum of one hundred and eight dollars by and on behalf of said affiant and said Mitchell, and that the same was paid prior to Jan. 26, 1887.

CHARLES B. SHEDD.

Subscribed and sworn to before me this 4th day of February, 1887.

E. A. DRUMMOND, *U. S. Com.*

Endorsed: Filed Feb'y 4th, 1887. Wm. H. Bradley, cl'k.

23 There was next offered the affidavit of Francis Mayo, filed herein February 4, 1887, and which is marked in pencil Exhibit "o," and is in the words and figures following, to wit:

24 STATE OF ILLINOIS, } ss:
Cook County, }

Personally appeared before me, a notary public within and for said county, Francis Mayo, of lawful age, and, being by me duly sworn, upon his oath states that in the summer of 1885 he served subpœnas on William Farnsworth and William Gardner, respectively, to appear and testify as witnesses on behalf of plaintiff in the case of Charles H. Mitchell against Jabez G. Smale and others in the United States circuit court, at Chicago, Illinois, and that he advanced and paid on behalf of the plaintiff in said suit to said Farnsworth and Gardner, respectively, as witness fees and mileage in said case the sum of two dollars and sixty cents respectively.

FRANCIS MAYO.

Subscribed and sworn to before me this 3d day of February, 1887.

JOHN L. MARSH,
Notary Public. [SEAL.]

Endorsed: Filed Feb'y 4th, 1887. Wm. H. Bradley, clerk.

25 There was also offered in support of said motion the affidavit of William Prescott, filed herein February 4, 1887, and which affidavit is marked in pencil Exhibit "n," and is the words and figures following, to wit:

26 Thereupon the plaintiff rested.

Whereupon the defendant-, in order to sustain the issues on

the part of defendant-, offered in evidence the original fee bill in said cause, which is marked in pencil Exhibit "p," and is the words and figures following, to wit:

27 Circuit Court of the United States, Northern District of Illinois.

CHARLES H. MITCHELL *vs.* JABEZ G. SMALE, JOHN I. BENNETT, Frank I. Bennett, and Conrad N. Jordan.	Gen. No., 18400. Term No., 192. Ejectment.

——— ———, sec'y.
William Prescott, plaintiff's attorney.

Plaintiff's Costs.

Bond for costs and filing do.	
Filing prec., —; dec., 10; not., —; affi't, —; deps., —	10
Filing mo's, 40; stip., 20	60
Issuing process, —; filing do., —, and ent. ret., —	
Ent. mo. and rule to def'ts to plead	
Ent. motion and order	
Taking affi'ts of witnesses	3 50
Ent. mo. and order to appear	
Certified copy of order	
Ent. mo. and order	
Issuing subpœna, filing do., and ent. ret.	
Ent. mo. and order to default def'ts	
Ent. mo. and order to take bill *pro confesso*	
Ent. mo. and order for damages	30
Ent. mo. and order of reference	
Ent. mo. and order to postpone trial	2 70
Ent. mo. and agreement to waive jury	60
Ent. mo. and agreement to submit to court	
Ent. finding of court, —; swearing witnesses, —	
Ent. mo. and order for jury, —; ent. verdict, —	
Ent. mo. and leave to amend	30
Ent. mo. to remand, &c.	30
Filing rep't, —; ent. mo. and order to confirm do., —	
Ent. mo. and order for decree	
Ent. decree, —; fo., —; cert. copy do., —	
Filing report of sale	
Ent. mo. and order to confirm do.	
Ent. confirmatory order and distribution	
Ent. mo. and order	
Ent. mo. and order for judg't	
Ent. judg't, dock't'g do., —, and ent. satisfct.	45
Ent. mo. and order for costs and *fi. fa.*	60
Issuing *fi. fa.*, filing do., and ent. ret.	1 25
Ent. mo. and order for writ poss.	30

Complete judg't record, —; folios, —	12 00
Taxing costs, indexing, docketing, &c.	3 00
	$26 00
Am't pl't'ff's clerk's fees bro't up	26 00
Marshal's fees	00
Docket fee	20 00
Wm. Farnsworth, 2 days, 18 m'l's	4 80
Eliza Hill, 1 " 4 "	1 90
Joseph M. Spahn, 1 " 15 "	3 00
Andrew H. Dalton, 1 " 17 "	3 20
T. L. Humphreville, 1 " 10 "	2 50
Wm. Gardner, 2 " 18 "	4 80
Alonzo H. Hill, 1 " 4 "	1 90
Costs in State court:	
Sheriff 2 50	
Clerk 6 00	
	8 50
	$76 60
Judg't *vs.* def't, Feb'y 1, 1886, for	01
	$

FRANK I. BENNETT, *Sec't'y.*

Defendants' Costs.

J. B. Hawley, John I. Bennett, def'ts' att'ys.

Filing demur., —; app., —; plea, 10; answer, —; deps.—	10
Bond for costs & filing do.	25
Filing transcript	10
Ent. mo. and order to default pl't'ff	
Ent. mo. and order to dismiss	
Ent. judg't, dock't'g do., and ent. satisfct.	
Ent. mo. and order for costs and *fi. fa.*	
Issuing *fi. fa.*, filing do., and ent. ret.	
Taxing costs, &c., —; judg't record, —	
	45
Docket fee, $—; attorney's fees, $—	
Transcript pd.	8 00
	$

Dismissed ——, 188–, at — costs.

28 [Endorsed:] Gen. No., 18400. Circuit court of the United States, northern district of Illinois. Charles H. Mitchell *vs.* Jabez G. Smale *et al.* Fee bill. Judg't rendered Feb'y 1, 1886. *Fi. fa.* issued ——, 188–. Dec. term, A. D. 1885.

Deposited by pl't'ff's att'y	$
Pd. by def'ts' att'y Dec. 11, '86	26 45
For cl'k	$26 45
Bal. costs pd. Dec. 11, '86	50 60
	$77 05

F. B. L. $87.00 pd. Jan'y 26, 1887, by assignee of pl'ff. Entered 1, 26, '87. F. B. L. William Prescott, plaintiff's attorney.

29 And thereupon said defendant offered a certified copy of the fee bill from the circuit court of Cook county of costs taxed in said cause prior to its removal to the said United States court; which said paper is marked in pencil Exhibit "q," and is in the words and figures following, to wit:

30 Circuit Court of Cook County, of the February 6th, A. D. 1883.

CHARLES H. MITCHELL *vs.* JABEZ G. SMALE *et al.* } Ejectment.

Clerk's costs paid by pl't'ff's attorney	6 00
" " " def'ts' "	1 50
Sheriff's fees paid by pl't'ff's attorney	2 50
Transcript to the U. S. circ't c't	8 00
	$18 00

Feb'y 23, 1883.

I, Henry Best, clerk of the circuit court of Cook county, State of Illinois, do hereby certify that the above is a true copy of all costs from my fee book in the above-entitled cause.

HENRY BEST, *Clerk.*

31 Whereupon said defendant offered in evidence a præcipe for a writ of error, with a certain indorsement thereon by the clerk of said court, filed by the attorney of the plaintiff in said cause January 11th, 1887; which said præcipe and endorsement are marked in pencil Exhibit "r," and are in the words and figures following, to wit:

Præcipe.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the Circuit Court of said District.

CHARLES H. MITCHELL *vs.* JABEZ G. SMALE *et al.* } Ejectment.

The clerk of said court will please issue a writ of error in said

cause to the circuit court aforesaid on behalf of the plaintiff; also a citation directed to the said defendants, Jabez G. Smale, John I. Bennett, and Conrad N. Jordan, in the usual form, returnable to the — term of the Supreme Court; also prepare the usual copy of the record in said cause in connection with said writ of error.

WILLIAM PRESCOTT,
Att'y for Pl'ff.

Endorsed: Filed Jan'y 11, 1887. Wm. H. Bradley, clerk.

32 Thereupon said defendant- offered in evidence a writ of error under the seal of this court, signed by its clerk, dated on the 11th day of January, A. D. 1887, marked in pencil Exhibit "s," and which is in the words and figures following, to wit:

(The above writ of error is attached to a former record in Mitchell *vs.* Smale *et al.*, filed in the Supreme Court of the United States.)

33 And thereupon the defendant- offered a copy of said writ of error and the filing thereon endorsed by the clerk on the said 11th day of January, A. D. 1887, marked Exhibit "t," which said copy of said writ of error and said indorsement thereon are in the words and figures following, to wit:

34 UNITED STATES OF AMERICA, } *ss*:
Northern District of Illinois, }

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Charles H. Mitchell, plaintiff, and Jabez G. Smale, John I. Bennett, Frank I. Bennett, and Conrad N. Jordan, defendants, in an action of ejectment, a manifest error hath happened, to the great damage of the said Charles H. Mitchell, plaintiff, as by his complaint appears, and it *is* being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 18—, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eleventh day of January, [SEAL.] in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the 111th year.

WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

Endorsed: Filed Jan'y 11, 1887. Wm. H. Bradley, clerk.
[Endorsed:] Supreme Court of the United States. Charles H. Mitchell *vs.* Jabez G. Smale *et al.* Copy of writ of error.

35 Thereupon the defendant- offered the bond filed in this case on the 18th day of January, 1887, together with the endorsement of Hon. H. W. Blodgett, as circuit judge, thereon, approving the same; which said bond and endorsement, marked in pencil Exhibit "u," are in the words and figures following, to wit:

Bond.

Supreme Court of the United States.

CHARLES H. MITCHELL
vs.
JABEZ G. SMALE *et al.* } In Ejectment.

Know all men by these presents that we, Charles B. Shedd and Edward A. Shedd, of Chicago, Illinois, are held and firmly bound unto Jabez G. Smale, John I. Bennett, Frank I. Bennett, and Conrad N. Jordan, and each of them, in the sum of five hundred dollars ($500), to be paid to said Jabez G. Smale, John I. Bennett, Frank I. Bennett, and Conrad N. Jordan, or either of them, or their executors or administrators respectively; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 13th day of January, A. D. 1887.

36 Whereas the above-named Charles H. Mitchell hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named Charles H. Mitchell shall prosecute his said writ of error to effect and answer all costs which may be awarded or adjudged against him if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Given under our hands and seals this the 13th day of January, 1887.

CHARLES B. SHEDD. [SEAL.]
EDWARD A. SHEDD. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. PRESCOTT.

Approved.
H. W. BLODGETT, *Judge.*

Endorsed: Filed Jan'y 18, 1887. Wm. H. Bradley, clerk.

37 And thereupon said defendant- offered in evidence the original citation in this case, signed by Hon. H. W. Blodgett, as

judge of said court, on the 18th day of January, 1887, together with the acknowledgement of service, signed by the attorney for the defendant-, endorsed on said citation at said date, marked in pencil Exhibit v; which said citation and endorsement are in the words and figures following, to wit:

(The above citation is attached to a former record in Mitchell *vs.* Smale *et al.*, filed in the Supreme Court of the United States.)

38 It was shown to the court that the clerk's fees for the issuing and filing of said writ of error paper are $2, and that they had not been paid.

And thereupon said defendant- objected to the granting of said motion: First, for the reason of the pendency of said suit on said writ of error in the Supreme Court of the United States; second, for the reason that all costs were not paid in said cause; and, third, for the reason that it appeared that the motion was made by *pendente lite* purchasers.

Whereupon the court overruled said objections and granted the said motion and entered a judgment thereon setting aside and vacating said judgment; to which ruling, entered in said case February 1st, 1886, of the court attorneys for the defendant- then and there excepted, and the court allowed a bill of exceptions to be taken and filed, as appears by the record.

And inasmuch as the matters and things aforesaid are not matters of record, said defendant- prays that this bill of exceptions may be settled, signed, and sealed by the court; which is accordingly done.

Jan. 5, 1887.

W. Q. GRESHAM.

Endorsed: Filed Feb'y 4, 1887. Wm. H. Bradley, clerk.

39 Afterwards, to wit, on the fifteenth day of March, 1887, there was filed in said clerk's office a bond in said entitled cause; which said bond is in the words and figures following, to wit:

40 Know all men by these presents that we, Conrad N. Jordan, John I. Bennett, Frank I. Bennett, Jabez G. Smale, and George Willard, are held and firmly bound unto Charles H. Mitchell, Charles B. Shedd, and Lizzie Prescott in the full and just sum of three hundred dollars, to be paid to the said Charles H. Mitchell, Charles B. Shedd, and Lizzie Prescott, jointly or severally, their executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-eighth day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in a suit depending in said court between Charles H. Mitchell, plaintiff (from whom, pending said suit, said Lizzie Prescott and Charles B. Shedd claim to have obtained con-

veyances respectively of interests in the premises involved in suit), and Conrad N. Jordan, John I. Bennett, Frank I. Bennett, and Jabez G. Smale, defendants, a judgment was rendered against the said Conrad N. Jordan, John I. Bennett, Frank I. Bennett, and Jabez G. Smale upon a motion to vacate a judgment in said cause rendered February 1st, 1886, and the said Conrad N. Jordan, John I. Bennett, Frank I. Bennett, and Jabez G. Smale having obtained a writ of error in the matter of said judgment and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in
41 the aforesaid suit, and a citation directed to the said Charles H. Mitchell, Lizzie Prescott, and Chas. B. Shedd, citing and admonishing — to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next, being about to issue:

Now, the condition of the above obligation is such that if the said Conrad N. Jordan, John I. Bennett, Frank I. Bennett, and Jabez G. Smale shall prosecute the said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Witness as to

signature of—
J. F. MELINE,
Washington, D. C.

C. N. JORDAN. [SEAL.]
JABEZ G. SMALE. [SEAL.]
JOHN I. BENNETT. [SEAL.]
FRANK I. BENNETT. [SEAL.]
GEORGE WILLARD. [SEAL.]

Sealed and delivered, except as to C. N. Jordan, in the presence of—

JOHN I. BENNETT.

Approved by—

W. Q. GRESHAM,
Circuit Judge.

Endorsed: Filed March 15, 1887. Wm. H. Bradley, clerk.

42 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court under the motion for a new trial in the cause wherein Charles H. Mitchell is the plaintiff and Jabez G. Smale, Conrad N. Jordan, John I. Bennett, and Frank I. Bennett are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this twelfth day of October, 1887.

WM. H. BRADLEY, *Clerk.*

43 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Jabez G. Smale, John I. Bennett, Frank I. Bennett, and Conrad N. Jordan, plaintiffs in error, and Charles H. Mitchell, defendant in error, in an action of ejectment, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1887, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of February, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the 111th year.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

[Endorsed:] Supreme Court of the United States. Jabez G. Smale *et al.*, plaintiffs in error, *vs.* Charles H. Mitchell, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office, U. S., northern district of Illinois.

44 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To Charles H. Mitchell, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1887, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Charles H. Mitchell is the plaintiff and Conrad N. Jordan *et al.* are the defendants, to show cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Walter Q. Gresham, judge, this 15th day of March, in the year of our Lord one thousand eight hundred and eighty-seven.

W. Q. GRESHAM.

45 [Endorsed:] Supreme Court of the United States. —— —— *vs.* —— ——. Citation to October term, A. D. 1887.

I hereby acknowledge service of the within citation by the receipt of a correct copy thereof this 16th day of March, 1887.

WM. PRESCOTT,
Att'y for Mitchell.

Endorsed on cover: N. Illinois C. C. U. S. No. 253. Jabez G. Smale, John I. Bennett, Frank I. Bennett, and Conrad N. Jordan, plaintiffs in error, *vs.* Charles H. Mitchell. Filed October 17, 1887.